



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Number: **201252024**
Release Date: 12/28/2012

Date: October 4, 2012

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:
All Years

UIL: 501.32-00; 501.32-01; 501.33-00

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Since you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

Letter 4038 (CG) (11-2005)
Catalog Number 47632S

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Holly O. Paz
Director, Exempt Organizations
Rulings and Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: July 13, 2012

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B = Date
C = State
D = CEO/Board Member
E = CFO/Board Member
F = Secretary/Board Member
G = State
H = Program
J = Event
K = Event

UIL:

501.32-00
501.32-01
501.33-00

Dear :

We have considered your application for recognition of exemption from federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.

Issues

- Do you meet the organizational test under section 501(c)(3) of the Code? No, for the reasons described below.
- Do you meet the operational test under section 501(c)(3) of the Code? No, for the reasons described below.

Letter 4036 (CG) (11-2005)
Catalog Number 47630W

- Did you provide sufficient information to establish that you are organized and operated exclusively for 501(c)(3) purposes? No, for the reasons described below.

Facts

You were incorporated on B as a non-profit corporation under C law. Your Articles of Incorporation and your by-laws state that your specific purpose is:

"To integrate a diversified economic base into older neighborhoods while addressing issues of poverty. Promote local empowerment through offering independent ownership of residential and commercial condos. Create state-of-the-art facilities which offer housing and business access, limited hotel space, recreation, dining areas, conference halls, training and resource areas, museums and libraries."

Your Articles also provide:

This Corporation is organized and operated exclusively for charitable purposes within the meaning of Section 501(c)(3), Internal Revenue Code."

No substantial part of the activities of this corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in or intervene in any political campaign (including the publishing or distribution of statements) on behalf of any candidate for public office..

The property of this corporation is irrevocably dedicated to charitable purposes and no part of the net income or assets of this corporation shall ever inure to the benefit of any private person. Upon the dissolution of the Corporation or winding up of the corporation, its assets remaining after payment, or provision for payment, of all debts and liabilities of this corporation shall be distributed to a nonprofit fund, foundation or corporation which is organized and operated exclusively for charitable purposes and which has established its tax exempt status under section 501(c)(3), Internal Revenue Code.

Your Bylaws provide in Article II that a board member may be removed for other reasons by the Chief Executive Officer when the reasons are deemed incompatible with either the successful running of the organization or its purposes. No provisions exist for the election or appointment of new board members or terms of office.

You submitted a Conflict Of Interest policy that is not executed. In addition, a copy of your Executive Compensation Policy, Purchasing Policy for the Acquisition of Goods and Services and Equal Opportunity Policy were included with Form 1023.

You are an organization formed to further multiple purposes. Your purposes include the following:

- Invest in the transformation of underserved neighborhoods

- Restore housing to a level of opulence to attract urban professionals
- Work to create a community that includes 1/3 affluent, 1/3 middle income, 1/3 subsidized
- Protect older, established homeowners and renters from predatory real estate practices
- Offer leasable luxury residential living spaces, commercial business spaces and hotel suite accommodations.
- Restore the American Dream of homeownership to all
- Reduce crime through pride of ownership
- Increase the tax base of the community
- Increase interactions between all members of the community
- Reduce community tensions brought on by socio-economic segregation
- Increase the peace and security of the community
- Advocate and promote the flex or mixed use zoning to address needs of the community

You have developed seven programs in furtherance of your purposes. The first and second programs include two separate art museums each to include workshops/training sessions, enrichment salons, concierge and conferencing services (free personal shopping and internet access), art classes, new artist openings, volunteer services and fundraising events. Your third program is a youth/officer horseback riding program to include neighborhood police officers working with local youth to teach them how to ride and care for horses. Horseback riding will also be offered to the general public on a fee basis. Your fourth program, H is a collaborative film project promoting the points of agreement between various religions, political views, educational models, media campaigns and business principles. Youth will develop new writing, audio, video, mixing, dancing, singing, production, directing, staging, performance and multimedia arts, computer graphics, animation and promotional marketing skills over the course of the project. Your fifth program will use park sing-a-longs to bring people of the community together. Your sixth program, J is a fundraising event in which national rangers and mounted officers run a race annually on a western style trail on New Year's Day in conjunction with a nationally recognized sporting event. Finally, your seventh program, K, is an annual fundraising event held on New Year's Eve around the world to hopefully be supported and attended by the President of the United States. K will be used to solicit donations and raise funds that will go toward ending poverty and prejudice by providing state-of-the-art development for housing and businesses to grow in an organic flex-space or mixed-use zoning format. The target market of each new community is 1/3 affluent, 1/3 moderate income and 1/3 subsidized. Inclusionary programs will include: ethics, professional development courses, basic life style awareness classes and lifestyle change assistance and coaching classes.

You have three officers and directors including D, E and F. D and E are married to each other and live in G. F is not related by blood or marriage to D and E; F resides in C. D is your Chief Executive Officer and will be the primary individual responsible for your operations. E is your Chief Financial Officer. F is your Secretary and is in charge of correspondence. Your board is voted in for a new one-year term every December. D and E will both receive compensation greater than \$50,000. The projected budgets you submitted with your application contained, among other things, development costs for each art museum including purchasing two properties as well as substantial renovation costs. The expenses for renovation of the two properties were removed from your budget during the processing of your application.

Your website is not operational at this time, pending approval of your tax-exempt status. Your current activities are conducted at a facility owned by D and E, no lease agreement is involved. You were formed in C, however, D and E have since moved to G, where you will be headquartered. Minimal activities have officially been conducted since your incorporation. D and E have a fourteen year history of transforming properties into nice livable space. While salaries are not currently being paid to D and E, future compensation was set at comparable executive and management positions in the public or private sectors.

Your mixed-use development projects will be located in older neighborhoods, however, they will not be started until funding is obtained. You plan to acquire housing that is neglected then rehab and either sell or rent it, including both residential and commercial spaces. Mixed uses will be present in the same building. You did not provide the specific criteria used to select tenants or buyers, other than that you will prohibit discrimination on the basis of race, color and religion. You did indicate that you plan to create neighborhoods that are 1/3 affluent, 1/3 moderate income and 1/3 subsidized. You did submit demographic information regarding two areas in which you plan to operate in G, which indicates that both areas have lower incomes than the median for the area, high concentration of minorities and higher crime rates. You plan to involve the community in your projects through the use of workshops, training programs and community events. One of your responses to our additional information request stated, "[You] at this time is removing from its plans all proposed housing development plans to include but not limited to: a) development of mixed use condo's; b) rehabilitation of older homes; and c) development of new communities that are one third affluent, one third moderate income, and one third subsidized." A current activity description was then requested based upon the removal of major activities. You stated in response to that request, "The activities of the organization have not changed. We still intend to rehab buildings ..." Subsequently you submitted an activity description that included the housing and commercial development projects as initially described in your Form 1023.

You plan to fundraise through public events over the next two years and build empowerment training, showcase art, launch the horseback riding and art programs, provide housing and development, and hold community festivals.

Your two art museums will be located in homes owned by D and E, one of which is used as their personal residence. Once the refurbishment and renovations are complete, the property will have art visible throughout the building where D and E reside. In addition, the organization's offices will be located in the building and various events will also be held there. In addition, the facility is currently used to provide housing and care for international exchange students residing with D and E. The use of the facilities will be donated to you by D and E. To date, all renovation costs have been paid for by D and E. The entire home will be open to the public to showcase how a family can live with international students and to showcase the art of the students. The students are required to attend school, however, funds are provided to you for their care. Subsequently, you stated that any income from student or shared housing will be "run separately from the 501c3 on a 1099 form." The second facility will also be refurbished for use by you. Photos were requested of the facilities. However, you declined to submit any. To date, the only activity that you have conducted has been holding informal salons on cultural enrichment and education at no charge to create harmony among different ethnic and economic groups.

Law

Section 501(c)(3) of the Code provides that corporations may be exempted from tax if they are organized and operated exclusively for charitable or educational purposes and no part of their net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations ("regulations") provides that, in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(a)-1(a)(2) of the regulations states that an organization is not exempt from tax merely because it is not organized and operated for profit. In order to establish its exemption, it is necessary that every such organization claiming exemption file an application form with the Internal Revenue Service.

Section 1.501(a)-1(a)(3) of the regulations states that an organization claiming exemption under section 501(a) and described in any paragraph of section 501(c) (other than section 501(c)(1)) shall file the form of application prescribed by the Commissioner and shall include thereon such information as required by such form and the instructions issued thereto.

Section 1.501(c)(3)-1(b)(1)(i) of the regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

- (a) Limit the purposes of such organization to one or more exempt purposes; and
- (b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities that in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(4) of the regulations provides that an organization's assets must be dedicated to an exempt purpose, either by an express provision in its governing instrument or by operation of law.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an applicant organization must establish that it serves a public rather than a private interest and specifically that it is not organized or operated for the benefit of private interests, such as designated individuals, the

creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable," is used in section 501(c)(3) in its generally accepted legal sense and includes: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency.

Section 1.501(c)(3)-1(d)(3)(i) of the regulations provides that the term "educational," as used in section 501(c)(3) of the Code, relates to:

- (a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or
- (b) The instruction of the public on subjects useful to the individual and beneficial to the community.

Rev. Rul. 67-138 - The organization's training of low-income families on various aspects of house-building and homeownership is "educational" since the training is useful to and develops the capabilities of the individuals who receive it and benefits the community. The organization's other activities in assisting families in need to obtain adequate housing are "charitable" since they provide relief to the underprivileged, lessen the burdens of government, and are a means of combating community deterioration. Accordingly, the organization is exempt from Federal income tax under section 501(c)(3) of the Code.

Rev. Rul. 68-655 - By educating the public about integrated housing and conducting intensive neighborhood educational programs to prevent panic selling because of the introduction of a non-white resident into a formerly all-white neighborhood, the organization is striving to eliminate prejudice and discrimination and to lessen neighborhood tensions. By making mortgage loans to families that cannot obtain such loans commercially but that otherwise are considered desirable residents, the organization is trying to break down the barriers of prejudice and gain acceptance of integrated housing within the community. It accomplishes this same objective by purchasing homes and reselling or leasing them on an open occupancy basis to families that will be compatible to a neighborhood and demonstrate the feasibility of integrated communities. By stabilizing the neighborhood, the organization is combating potential community deterioration. Accordingly, the organization is exempt from Federal income tax under section 501(c)(3) of the Code.

Rev. Rul. 70-186, 1970-1 C.B. 128, in which it was found that it would be impossible to accomplish the organization's charitable purposes of cleaning and maintaining a lake without providing benefits to certain private property owners. In the quantitative sense, to be incidental, the benefit to private interest must not be substantial in the context of the overall public benefit conferred by the activity.

Rev. Rul. 70-585 – Provides four situations where an organization is formed for charitable purposes and accomplishes its charitable purposes through a program of providing housing for low and, in certain circumstances, moderate income families, it is entitled to exemption under section 501(c)(3) of the Code. Situation 1 - By providing homes for low income families who otherwise could not afford them, the organization is relieving the poor and distressed. Thus, it is held that this organization is organized and operated exclusively for charitable purposes, and it is exempt from Federal income tax under section 501(c)(3) of the Code. Situation 2 - the organization's activities are designed to eliminate prejudice and discrimination and to lessen neighborhood tensions, it is engaged in charitable activities within the meaning of section 501(c)(3) of the Code. Situation 3 - the organization's purposes and activities combat community deterioration by assisting in the rehabilitation of an old and run-down residential area, they are charitable within the meaning of section 501(c)(3) of the Code. Situation 4 - The organization plans to erect housing that it to be rented at cost to moderate income families. The organization is financed by mortgage money obtained under Federal and State programs and by contributions from the general public. Since the organization's program is not designed to provide relief to the poor or to carry out any other charitable purpose within the meaning of the regulations applicable to section 501(c)(3) of the Code.

Rev. Rul. 74-587 - Through its program of financial assistance, the organization is devoting its resources to uses that benefit the community in a way that the law regards as charitable. Such conclusion follows from the fact that the organization's described program of aiding minority-owned businesses promotes the social welfare of the community, since it helps to lessen prejudice and discrimination against minority groups by demonstrating that the disadvantaged residents of an impoverished area can operate businesses successfully if given the opportunity and proper guidance. It also helps to relieve poverty, while at the same time lessening neighborhood tensions and dissatisfaction arising from the lack of employment opportunities by assisting local businesses that will provide a means of livelihood and expanded job opportunities for unemployed or underemployed area residents. Finally, it combats community deterioration by helping to establish businesses in the area and by rehabilitating existing businesses that have deteriorated. Although some of the individuals receiving financial assistance in their business endeavors under the organization's program may not themselves qualify for charitable assistance as such, that fact does not detract from the charitable character of the organization's program. The recipients of loans and working capital in such cases are merely the instruments by which the charitable purposes are sought to be accomplished. Accordingly, the organization is exempt from Federal income tax under section 501(c)(3) of the Code.

Rev. Rul. 76-147 - Activities of the organization include urging community residents to clean and repair private property, encouraging realtors to use nondiscriminatory sales practices in the buying and selling of homes, providing general information on methods of counteracting housing deterioration and ways of improving homes, sponsoring alley clean-up campaigns, taking surveys to determine the adequacy of schools and recreational facilities in the area, and supporting programs directed at achieving reasonable population density standards in relation to community resources. By engaging in the community improvement activities described above, the organization is combating community deterioration within the meaning of section

1.501(c)(3)-1(d)(2) of the regulations. Such activities benefit a community in a charitable manner whether or not the community is presently in a state of decline. The community, and derivatively all those who live there, are benefitted. See Rev. Rul. 68-655, 1968-2 C.B. 213, which states that an organization engaged in activities designed to stabilize a neighborhood is combatting "potential" community deterioration and qualifies for exemption under section 501(c)(3) of the Code.

Rev. Rul. 76-419 - By inducing industrial enterprises to locate in an economically depressed area and to hire and train the underemployed and unemployed in that area, the subject organization is similarly devoting its resources to uses that benefit the community in ways the law regards as charitable. The organization's activities serve not only to relieve poverty, but also to lessen neighborhood tensions caused by the lack of jobs and job opportunities in the area. Further, by creating an industrial park out of a blighted area, the organization is combating community deterioration.

Section 3.08 of Rev. Proc. 2012-9, provides that an organization seeking recognition of exemption under section 501 (c)(3) must submit a completed Form 1023. A substantially completed application includes a detailed narrative statement of proposed activities, including each of the fundraising activities of a § 501(c)(3) organization, and a narrative description of anticipated receipts and contemplated expenditures.

Section 4.03 of Rev. Proc. 2012-9, provides exempt status may be recognized in advance of the organization's operations if the proposed activities are described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements for exemption pursuant to the section of the Code under which exemption is claimed. A mere restatement of exempt purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully describe all of the activities in which it expects to engage, including the standards, criteria, procedures, or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the Service that it qualifies for exemption pursuant to the section of the Code under which exemption is claimed, the Service will generally issue a proposed adverse determination letter or ruling.

In Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279, 283, 66 S. Ct. 112, 90 L. Ed. 67 (1945), the Supreme Court held that the "presence of a single . . . [nonexempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly . . . [exempt] purposes."

In P.P.L. Scholarship v. Commissioner, 82 T.C. (1984), an organization operated bingo at a bar for the avowed purpose of raising money for scholarships. The board included the bar owners, the bar accountant, also the director of the bar, as well as two players. The board was self-perpetuating. The Court reasoned that since the bar owners controlled the organization and appointed the organization's directors, the activities of the organization could be used to the advantage of the bar owners

La Verdad v. Commissioner, 82 T.C. 215 (1984), an organization was organized to provide education and charity, but failed to provide sufficient details regarding its proposed operations. The court held that it failed to prove that it would operate exclusively for exempt purposes under section 501(c)(3) of the Code.

Peoples Prize v. Commissioner, T.C. Memo 2004-12 (2004). Petitioner has, for the most part, provided only generalizations in response to repeated requests by respondent for more detail on prospective activities. Such generalizations do not satisfy us that petitioner qualifies for the exemption.

New Dynamics Foundation v. United States, 70 Fed. Cl. 782 (2006), the organization failed to establish an administrative record that showed it was operated for exclusively exempt purposes. The court found instead that it was part of a tax avoidance scheme and primarily provided private benefits.

Application of Law

Section 501(c)(3) of the Code sets forth two main tests for an organization to be recognized as exempt. An organization must be both organized and operated exclusively for purposes described in section 501(c)(3). Section 1.501(c)(3)-1(a)(1). You fail both tests.

Organizational Test

To demonstrate that it is organized exclusively for exempt purposes, thus satisfying the organizational test, an organization must have a valid purpose clause and a valid dissolution provision. Sections 1.501(c)(3)-1(b)(1)(i) and 1.501(c)(3)-1(b)(4) of the regulations. You do not have a valid purpose clause. Therefore, you do not meet the organizational test. A valid purpose clause limits the organization's purposes to one or more exempt purposes and does not expressly empower the organization to engage, other than as an insubstantial part of its activities, in activities that in themselves are not in furtherance of one or more exempt purposes. Section 1.501(c)(3)-1(b)(1)(i) of the regulations.

Your Articles provide that your specific purpose is: "To integrate a diversified economic base into older neighborhoods while addressing issues of poverty. Promote local empowerment through offering independent ownership of residential and commercial condos. Create state-of-the-art facilities which offer housing and business access, limited hotel space, recreation, dining areas, conference halls, training and resource areas, museums and libraries."

Your Articles do not limit your purposes to one or more exempt purposes. Specifically, offering independent ownership of residential and commercial condos as well as housing and business access and limited hotel space are not exempt purposes. Therefore, you do not have a valid purpose clause. Accordingly, you are not organized for exempt purposes.

Operational Test

To satisfy the 501(c)(3) operational test, an organization must establish that it is operated exclusively for one or more exempt purposes. Section 1.501(c)(3)-1(c)(1) of the regulations. You failed to establish that you are operated exclusively for one or more exempt purposes.

Based on the information you provided, you have failed to establish that your operations will be charitable through relief of the poor and distressed. The regulations define the word "charitable" as including relief of the poor and distressed or of the underprivileged. Section 1.501(c)(3)-1(d)(2) of the regulations. Your plans include acquiring housing and to provide both residential and commercial spaces that include 1/3 affluent, 1/3 middle income and 1/3 subsidized housing. Leasable luxury residential living spaces, commercial business spaces and hotel suite accommodations will also be included. Your housing and development activities will not be restricted to low income individuals as in Rev. Rul. 70-585, supra. Nor are the commercial spaces reserved for aiding minority-owned businesses that promote the social welfare of the community, by helping to lessen prejudice and discrimination as did the organization in Rev. Rul. 74-587, supra. Nor are you similar to the organization in Rev. Rul. 76-419, supra, which was inducing industrial enterprises to locate in an economically depressed area and to hire and train the underemployed and unemployed in that area. You have provided no evidence that your proposed housing or commercial spaces will serve any recognized charitable purposes.

You have not established that your operations will be educational within the meaning of Section 1.501(c)(3)-1(d)(3)(i). Your enrichment salons were conducted to create harmony among different ethnic and economic groups in the community. You did not submit detailed information regarding the salons, such as who attended, when they were held, the topics that were discussed, how they were publicized to the community or how they created harmony among the different groups in the community. While the salons may have furthered charitable or educational purposes, you have not submitted sufficient information to support that fact. In addition, your proposed art museums consist of plans to display artwork by the international students residing with D and E in their personal residence. You have not demonstrated that your art museum is even open to the public or that you are providing instruction or training of the individual for the purpose of improving or developing his capabilities. You are unlike the organizations in Rev. Rul. 67-138 and Rev. Rul. 68-655 in that you have not demonstrated that your activities further an educational purpose.

While some of your proposed activities appear to be educational or charitable a substantial part of your proposed activities are not exclusively charitable or educational. In addition, two of your three board members are married to each other and the third board member resides in a different state. You indicated that your board members are voted in each year for a one year term. However, the board members have remained the same since you incorporated over seven years ago. Your Bylaws do not include any provisions for the election or appointment of new board members. They do provide that a board member may be removed by the Chief Executive Officer. D is the Chief Executive Officer and E is the Chief Financial Officer; they control your daily operations. You did submit a Conflict of Interest Policy that was not executed. D and E will both be compensated. Finally, you plan to use two facilities owned by D and E to conduct the organization's activities. Initially, you indicated that renovation costs for the facilities would be paid by you, however, you subsequently removed those costs from your budgets. The use of the facilities will be donated to you, however, one of the buildings is also D and E's

residence. You do not have adequate safeguards or controls in place to protect you in your dealings with D and E. Finally, D and E will be determining their own compensation. You are similar to the organization in *P.P.L. Scholarship v. Commissioner*, supra, where the board included related parties and was self-perpetuating. The Court reasoned that since the related parties controlled the organization and appointed the organization's directors, the activities of the organization could be used to the advantage of the bar owners.

You have not demonstrated that any private benefit or inurement is incidental to the overall public benefit as in Rev. Rul. 70-186. The private benefit and inurement to C and D as well as other non-charitable beneficiaries that will be involved in your proposed housing and commercial developments is substantial and is not incidental to any charitable purposes.

Failure to Provide Sufficient Information

Additional information was requested six times regarding your proposed activities. However, you failed to provide the requested detailed information. You failed to demonstrate that your activities are or will be conducted in a charitable or educational manner as required.

The information you submitted is insufficient for us to conclude that you are organized and operated exclusively for charitable purposes as specified in section 501(c)(3) of the Code. To be exempt, an organization must provide a substantially complete application. Section 1.501-1(a)(2) and (3). Exemption from federal income tax is not a right; it is a strictly interpreted matter of legislative grace and the burden rests with the applicant to prove that it is entitled to exempt status. *New Dynamics Foundation*, supra. Your application did include some information required by the form and its instructions such as copies of your bylaws, organizing document and an activity description. However, the activity description did not include detailed information regarding any of your seven programs. Your application does not satisfy the requirements of sections 1.501(a)-1(a)(2) and (3) of the regulations and Rev. Proc. 2012-9.

You are not fully operational and do not intend to commence operations of all of your activities until you are recognized as an exempt organization. The Service may recognize exempt status in advance of operations if an applicant describes its proposed operations in sufficient detail to permit a conclusion that it will clearly meet the requirements for exemption in accordance with section 501 (c)(3) of the Code. However, a mere restatement of exempt purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. *La Verdad v. Commissioner*, supra.

Conclusion

Based on the facts and information provided, you are not organized or operated exclusively for exempt purposes. You are not organized exclusively for exempt purposes as required by section 1.501(c)(3)-1(b)(1)(i) of the regulations because your Articles of Incorporation do not limit you to one or more exempt purposes. You are not operated exclusively for an exempt purpose as required by sections 1.501(c)(3)-1(a)(1) and 1.501(c)(3)-1(c)(1) of the regulations because providing mixed use spaces for affluent and middle income residents as well as commercial spaces for businesses does not further an exempt purpose nor do you limit your

services to a charitable class and you provide only minimal educational activities. You do not serve a public rather than a private interest as required by section 1.501(c)(3)-1(d)(1)(ii) of the regulations because you are providing services to a non-charitable class nor are your other activities furthering a recognized charitable purpose. Furthermore, you have not provided sufficient detail to establish that your proposed activities are exclusively charitable or educational within the meaning of section 501(c)(3) of the Code.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns. Contributions to you are not deductible under section 170.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892. These items include:

1. The organization's name, address, and employer identification number;
2. A statement that the organization wants to appeal the determination;
3. The date and symbols on the determination letter;
4. A statement of facts supporting the organization's position in any contested factual issue;
5. A statement outlining the law or other authority the organization is relying on; and
6. A statement as to whether a hearing is desired.

The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation

during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations
Rulings & Agreements

Enclosure, Publication 892